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Attorneys for Defendant
SUNBEAM PRODUCTS, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

FIRE INSURANCE EXCHANGE,

No. CV 08-0367 CW

Plaintiff,

SUNBEAM PRODUCTS, INC.'S ANSWER TO COMPLAINT

V.

**SUNBEAM PRODUCTS, INC. and
DOES 1 through 10, inclusive.**

Defendants

Complaint Filed: November

Complaint Filed: November

Defendant Sunbeam Products, Inc. (“Sunbeam”), for itself and itself only, and in answer to the California Judicial Counsel Form Complaint filed by plaintiff Fire Insurance Exchange, admits, denies and alleges as follows:

ANSWER TO GENERAL ALLEGATIONS OF THE COMPLAINT

1. Sunbeam admits that the Complaint makes the allegations referenced in paragraph 1, but denies all substantive facts stated or implied in this paragraph, and further denies that plaintiff is entitled to any relief. Sunbeam denies all other allegations not specifically admitted.

2. In reference to paragraph 2, Sunbeam admits that it was served with a form Complaint consisting of five pages.

1 3. Sunbeam lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations contained in paragraph 3 and, on that basis, denies them.

3 4. Plaintiff does not allege any facts and has not checked any applicable boxes
4 at paragraph 4.

5 5. Sunbeam admits that it is a Delaware Corporation with its principal place of
6 business in Florida. Sunbeam denies all other allegations not specifically admitted.

7 6. Sunbeam lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations contained in paragraph 6 and, on that basis, denies them.

9 7. Plaintiff does not allege any facts and has not checked any applicable boxes
10 at paragraph 7.

11 8. Sunbeam admits that the subject property, located at 7308 Outlook, Oakland,
12 California 94605, is within the Court's jurisdictional area.

13 9. Sunbeam lacks knowledge or information sufficient to form a belief as to the
14 truth of the allegations contained in paragraph 9 and, on that basis, denies them.

15 10. Sunbeam admits that the Complaint makes the allegations referenced in
16 paragraph 10, but denies all substantive facts stated or implied in this paragraph and
17 further denies that plaintiff is entitled to any relief. Sunbeam denies all other allegations
18 not specifically admitted.

19 11. Sunbeam lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations contained in paragraph 11 and, on that basis, denies them.

21 12. Plaintiff does not allege any facts and has not checked any applicable boxes
22 at paragraph 12.

23 13. On information and belief, Sunbeam admits that the relief sought is in excess
24 of \$100,000.

25 14. Sunbeam denies that plaintiff is entitled to any relief, including, but not to
26 limited to, any of the relief sought in paragraphs 14.

27 15. Sunbeam lacks knowledge or information sufficient to form a belief as to the
28 truth of the allegations contained in paragraph 15 and, on that basis, denies them.

ANSWER TO FIRST CAUSE OF ACTION (General Negligence)

3 16. Sunbeam denies that it was negligent in any manner or degree in regard to
4 the electric blanket referenced in paragraph GN-1 of plaintiff's First Cause of Action –
5 General Negligence, and further denies that plaintiff is entitled to any relief. Sunbeam
6 additionally denies that it or any product distributed by it caused or contributed to the
7 alleged incident, injuries, and damages claimed by plaintiff. Sunbeam further denies that
8 it failed to provide adequate warnings in regard to the electric blanket referenced
9 paragraph GN-1 of plaintiff's First Cause of Action – General Negligence. Sunbeam
10 lacks knowledge or information sufficient to form a belief as to the truth of the remaining
11 allegations contained in plaintiff's First Cause of Action – General Negligence and, on
12 that basis, denies them.

ANSWER TO SECOND CAUSE OF ACTION (Products Liability)

15 17. In response to paragraph Prod. L-1 of plaintiff's Second Cause of Action –
16 Product Liability, Sunbeam denies that a Sunbeam electric blanket caused or contributed
17 to any of the injuries or damages claimed by plaintiff.

18. In response to paragraph Prod. L-2 of plaintiff's Second Cause of Action –
19 Product Liability, Sunbeam lacks knowledge or information sufficient to form a belief as
20 to the truth of the allegations contained in paragraph Prod. L-2 as to the purchase and use
21 of the product without inspection for defects and use of the product in its intended
22 manner, and on that basis, denies those allegations. Sunbeam further denies the
23 allegations in paragraph Prod. L-2 that the product was defective when it left Sunbeam's
24 control or at any time there after.

25 19. In response to paragraph Prod. L-3 of plaintiff's Second Cause of Action –
26 Product Liability, Sunbeam lacks knowledge or information sufficient to form a belief as
27 to the truth of the allegations contained in paragraph Prod. L-3 and, on that basis, denies
28 them.

1 20. In response to paragraph Prod. L-4 of plaintiff's Second Cause of Action –
2 Product Liability, Sunbeam admits that it designs, manufactures, assembles, and sells
3 Sunbeam electric blankets. Sunbeam denies that the electric blanket referenced in
4 plaintiff's Second Cause of Action – Product Liability was defective in any manner or
5 degree. Sunbeam additionally denies that it or any product distributed by it caused or
6 contributed to the alleged incident, injuries, and damages claimed by plaintiff. Sunbeam
7 denies all remaining allegations of paragraph Prod. L-4 of plaintiff's Second Cause of
8 Action – Product Liability.

9 21. In response to paragraph Prod. L-5 of plaintiff's Second Cause of Action –
10 Product Liability, Sunbeam denies that it was negligent in any manner or degree in regard
11 to the electric blanket referenced in plaintiff's Second Cause of Action – Product
12 Liability, and further denies that plaintiff is entitled to any relief. Sunbeam additionally
13 denies that it or any product distributed by it caused or contributed to the alleged incident,
14 injuries, and damages claimed by plaintiff. Sunbeam denies all remaining allegations of
15 paragraph Prod. L-5 of plaintiff's Second Cause of Action – Product Liability.

16 22. In response to paragraph Prod. L-6 of plaintiff's Second Cause of Action –
17 Product Liability, Sunbeam denies that it breached any warranty to plaintiff, whether
18 implied or express, in regard to the electric blanket referenced in plaintiff's Second Cause
19 of Action – Product Liability, and further denies that plaintiff is entitled to any relief.
20 Sunbeam additionally denies that it or any product distributed by it caused or contributed
21 to the alleged incident, injuries, and damages claimed by plaintiff. Sunbeam denies all
22 remaining allegations of paragraph Prod. L-4 of plaintiff's Second Cause of Action –
23 Product Liability.

24 23. Plaintiff does not allege any facts and has not checked any applicable boxes
25 at paragraph L-7.

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**1 FOR ITS AFFIRMATIVE DEFENSES TO EACH CAUSE OF ACTION, WHILE
2 SPECIFICALLY DENYING ANY LIABILITY TO PLAINTIFF OR ANYONE,
3 SUNBEAM ALLEGES AS FOLLOWS:**

FIRST AFFIRMATIVE DEFENSE (Failure to State a Claim)

6 1. The Complaint fails to state a claim on which relief may be granted against
7 Sunbeam.

SECOND AFFIRMATIVE DEFENSE (Spoliation of Evidence)

10 2. Plaintiff and its representatives failed to timely place Sunbeam on notice of
11 the subject occurrence within a reasonable time after they knew or reasonably should have
12 known that the Sunbeam product would be alleged as a potential cause of this loss.
13 Plaintiff further failed to preserve the fire scene before Sunbeam was allowed an
14 opportunity to inspect the fire scene and preserve evidence. By the time that Sunbeam
15 was placed on notice of this claim and was provided the opportunity to inspect the fire
16 scene, the fire scene was irreparably altered and destroyed. Plaintiff's spoliation of the
17 fire scene and destruction of evidence potentially relevant to the origin and cause of the
18 subject fire has caused unfair prejudice to defendants and entitles Sunbeam to sanctions,
19 including but not limited to dismissal of the action, the presumption or inference that any
20 such evidence would not have been favorable to plaintiff's claims, and preclusion of
21 plaintiff's witnesses from offering any such testimony concerning the fire scene and all
22 evidence not properly preserved.

THIRD AFFIRMATIVE DEFENSE (Comparative Fault / Fault of Others)

25 3. The losses and damages complained of by plaintiff, if any, were proximately
26 caused by the negligence, acts, omissions and/or fault of plaintiff and parties, individuals,
27 or entities other than this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE (Altered Condition)

4. On information and belief, the product that allegedly injured plaintiff was altered, changed, or otherwise modified by parties, individuals, or entities other than this defendant, and said modifications, changes or alterations were the proximate cause of the damages alleged by plaintiff, if any.

FIFTH AFFIRMATIVE DEFENSE (Unclean Hands)

5. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of unclean hands and similar rules requiring plaintiff to do equity to obtain relief.

SIXTH AFFIRMATIVE DEFENSE (Waiver / Acquiescence / Laches / Estoppel)

6. Plaintiff's claims are barred, in whole or in part, by the equitable doctrines of waiver, acquiescence, laches and/or estoppel, in that, including without limitation, plaintiff unreasonably delayed in bringing its claims.

SEVENTH AFFIRMATIVE DEFENSE (Failure to Mitigate)

7. Plaintiff's claims are barred, in whole or in part, because plaintiff failed to mitigate its damages and/or took unreasonable, unnecessary, and/or unduly expensive actions in purported mitigation, and Sunbeam is not responsible therefore.

EIGHTH AFFIRMATIVE DEFENSE (Accord and Satisfaction)

8. Plaintiff's claims are barred, in whole or in part, by the doctrine of accord and satisfaction.

NINTH AFFIRMATIVE DEFENSE (Release)

9. Plaintiff's claims are barred, in whole or in part, by release of those claims.

TENTH AFFIRMATIVE DEFENSE (Misuse and Abuse)

10. Plaintiff's claims are barred, in whole or in part, by the doctrine of misuse. Upon information and belief, any alleged defects or nonconformities in the subject product were caused solely and exclusively by misuse, abuse, and failure to use the product in the manner in which it was intended and by a failure to follow instructions regarding the product. Such misuse, abuse, and failure to follow instructions on the part of plaintiff and parties, individuals, and entities other than this answering Defendant, proximately caused or contributed to the damages complained of, if any there were.

ELEVENTH AFFIRMATIVE DEFENSE (Lack of Warranty Coverage)

11. The alleged defect or nonconformity at issue, and any alleged damage resulting from the alleged defect or nonconformity at issue, were and are expressly excluded from and otherwise not covered by the express written limited warranty applicable to the subject product.

TWELFTH AFFIRMATIVE DEFENSE (Lack of Priority)

12. Plaintiff's claims for breach of implied warranty are barred by a lack of privity between plaintiff and this answering Defendant.

THIRTEENTH AFFIRMATIVE DEFENSE (Intervening/Superseding Acts)

13. No act or omission of this answering Defendant substantially contributed to or was a substantial cause in bringing about the occurrence, damage, or loss alleged in plaintiff's Complaint, including any defect or nonconformity in the subject product. This answering Defendant further alleges that any act or omission of this defendant was superseded by the acts or omissions of plaintiff and/or by the acts or omission of other persons or entities, which acts or omissions were the independent, intervening, and

1 proximate cause(s) of the incident, damage, loss defects, and/or nonconformities alleged
 2 in this action.

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4 **FOURTEENTH AFFIRMATIVE DEFENSE**
(Justiciability)

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6 14. Plaintiff's claims are barred, in whole or in part, by the doctrines of
 7 ripeness, mootness, primary jurisdiction, failure to exhaust remedies, and/or other
 8 justiciability doctrines.

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10 **FIFTEENTH AFFIRMATIVE DEFENSE**
(Reservation of Defenses)

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12 15. The Complaint fails to describe the claims asserted against Sunbeam with
 13 sufficient particularity to permit Sunbeam to ascertain what other defenses may exist.
 14 Sunbeam therefore reserves the right to assert all defenses that may pertain to the
 15 Complaint once the precise nature of such claims has been ascertained.

16 **WHEREFORE**, Sunbeam prays that judgment be entered as follows:

- 17
- 18 1. That this Court enter a judgment in favor of Sunbeam and against plaintiff
 19 on the Complaint and that the Complaint be dismissed with prejudice;
 20
- 21 2. That this Court award Sunbeam reasonable attorneys' fees and expenses,
 22 costs of suit and such other and further relief as this Court may deem appropriate.

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24 Dated: January 28, 2008

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26 CARROLL, BURDICK & McDONOUGH LLP

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28 By _____ / s /
 S. Mark Varney
 Attorneys for Defendant
 SUNBEAM PRODUCTS, INC.

1 **DEMAND FOR JURY TRIAL**

2 Sunbeam demands trial by jury in this action of all issues properly triable by jury.

3 Dated: January 28, 2008

4 CARROLL, BURDICK & McDONOUGH LLP

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6 By _____ / s /
7 S. Mark Varney
8 Attorneys for Defendant
9 SUNBEAM PRODUCTS, INC.

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